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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/804,811	03/19/2004	David L. Selinger	249768079US	7068

25096 7590 09/28/2006

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EXAMINER	
DUNHAM, JASON B	
ART UNIT	**PAPER NUMBER**
3625	

DATE MAILED: 09/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/804,811	SELINGER ET AL.	
	Examiner	Art Unit	
	Jason B. Dunham	3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ____ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *06 July 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *10-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *10-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claims 10-20 are pending and claim 9 was canceled in the reply filed July 6, 2006 in response to the office action dated April 6, 2006.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 10-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Gross (U.S. Patent Application Publication No. 2004/0260600).

Referring to claim 10. Gross further discloses a method in a computing system for characterizing an item, comprising:

- Determining a score for the item reflecting the extent to which the item has been ordered by customers who have been determined to commonly order items promptly after they become available (Gross: paragraphs 19 and 31-32); and
- Scaling the score in a manner that causes to positively relate to the item's price and negatively relate to the amount of time that has elapsed since the item became available for ordering (Gross: figure 1 and paragraphs 70,126, and 153).

Referring to claim 11. Gross further discloses a method wherein an item detail web page is associated with the product, the method further comprising including in the item detail web page an indication of the item's scale score (Gross: paragraph 43).

Referring to claim 12. Gross further discloses a method wherein the included indication explicitly indicates the item's scaled score (Gross: paragraph 126).

Referring to claim 13. Gross further discloses a method wherein the included indication explicitly indicates a range into which the item's scaled score falls (Gross: paragraph 191).

Referring to claim 14. Gross further discloses a method wherein the included indication indicates a relationship between the item's scaled score and scale scores for additional items (Gross: paragraph 191).

Referring to claim 15. Gross further discloses a computer readable medium whose contents cause a computing system to characterize items by: for each of a plurality of items:

- Determining a score for the item in a manner that causes it to positively relate to the extent to which the item has been ordered by customers who have been determined to commonly order items promptly after they become available, positively relate to the item's price, and negatively relate to the amount of time that has elapsed since the item became available for ordering (Gross: paragraphs 31-32,70,126, & 153); and
- Storing indications identifying at least a portion of the items having the highest scores (Gross: figure 5A).

Referring to claim 16. Gross further discloses a computer readable medium wherein the contents of the medium cause the computer system to store in conjunction with the stored indications the scores determined for the corresponding items (Gross: figure 5A).

Referring to claim 17-19. Gross further discloses a computer readable medium wherein the contents of the medium cause the computer system to generate a document, transmit to customers, and transmit to make available for retrieval by customers a document identifying at least a portion of the items having the highest scores (Gross: figure 5A).

Referring to claim 20. Claim 20 is rejected under the same rationale set forth above. Gross further discloses scoring items that have a high price and recently become available for ordering (Gross: paragraphs 19 and 158).

Response to Arguments

Applicant's arguments filed July 6, 2006 have been fully considered but they are not persuasive. Applicant argues that Gross does not disclose a method for characterizing an item comprising scaling the score to positively relate it to the item's price and negatively relate it to the amount of time the item has been available for ordering. The examiner notes paragraph 70 of Gross which discloses scoring items, such as stocks, according to their prices. Furthermore, paragraph 153 of Gross discloses, "selecting stocks just before they rise substantially or even decline substantially in price". Lastly, Gross disclose scoring items based on demand by early

adopters (Gross; paragraph 19). By definition, an early adopter is someone who buys or use new items or technology soon after it becomes available. Claims 11-19 are rejected under the same rationale.

Applicant further argues that Gross does not disclose "a score indicating the extent to which the product...has a high price, and recently became available for ordering", as claimed in claim 20. The examiner notes the discussion of paragraph 19 above regarding newly available items and paragraph 158 of Gross disclosing, "items that turn out to be valuable".

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason B. Dunham whose telephone number is 571-272-8109. The examiner can normally be reached on M-F, 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeff Smith can be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JBD
Patent Examiner
9/25/06

